



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: February 15, 2005

Approved

Date

COUNCIL DISTRICT: Citywide
SNI AREA: All

SUBJECT: PROPOSED REVISIONS TO THE CITY COUNCIL POLICY ON
POST-CONSTRUCTION URBAN RUNOFF MANAGEMENT

REASON FOR THE SUPPLEMENTAL MEMO

To provide additional information obtained after the initial City Council Memo was prepared.

RECOMMENDATION

Planning staff recommends that the City Council approve the revised City Council Policy on Post-Construction Urban Runoff Management (Policy No. 6-29, Attachment 1).

BACKGROUND

As indicated in the original City Council memo, Planning staff, in collaboration with other City departments and the Redevelopment Agency, is proposing revisions to the existing Post-Construction Urban Runoff Management Policy (Policy). The revisions are proposed in order to: (1) address concerns that have been expressed by Regional Water Quality Control Board (RWQCB) staff with the current City Policy; and, (2) align San José's implementation of hydraulic sizing with the implementation of these new requirements in other Bay Area counties. On January 27, Planning staff sent a public hearing notice to stakeholders, advising them of the proposed revision to the Policy. In response, Planning staff has received several inquiries requesting general information and two comment letters regarding specific elements of the proposed Policy.

Regional Water Board Comments

A comment letter dated February 8, 2005 (Attachment 2), was received from Bruce Wolfe, Executive Officer of the RWQCB. Although the letter indicates that the revised Policy addresses the majority of the concerns previously expressed by the RWQCB staff, Mr. Wolfe asked that the Council consider two additional modifications to the Policy: (1) delete the Floor Area Ratio (FAR) provision in the definition of "Urban Core," and (2) clarify in the Policy that a finding that infiltration based sizing is impracticable is not sufficient for granting a waiver to providing hydraulic sized treatment measures onsite.

Comments from the Public

On January 31, 2005, Planning staff received email correspondence from Myron Crawford of Berg & Berg Developers, Inc. (Attachment 3). Mr. Crawford requested clarification as to when the Policy would take effect and whether the Policy would address Hydromodification (HMP).

ANALYSIS

The RWQCB letter expresses concern that the Policy, as proposed, creates an exemption for projects deemed Smart Growth projects that have an FAR greater than 1. These projects are typically multi-storied buildings on proportionally compact sites. RWQCB staff has indicated that they believe this provision in the Policy would create a large category of projects that would not be required to provide stormwater treatment at all if onsite treatment is found to be impracticable, and ultimately many projects throughout the City would be exempted. Therefore, in verbal and written correspondence, RWQCB staff requested that the FAR criterion be limited only to certain geographic areas, or be deleted completely.

As proposed in the revised Policy, this criterion of Alternative Compliance/Waiver provisions would be applied to certain Smart Growth projects on sites that are less than or equal to five acres, and that are being redeveloped as multi-storied (FAR greater than 1) commercial or industrial buildings. Most importantly, the provision would only apply in cases in which the developer has demonstrated that it is impracticable to provide hydraulic sized storm water treatment onsite. City staff recommended the five-acre maximum size to address RWQCB staff concerns that too many projects could potentially qualify for a Waiver under the Policy. The five-acre limitation is consistent with the maximum size limit for categorically exempt provisions in CEQA (Section 1532).

RWQCB staff has commented that higher density development would still contain enough landscaped area to accommodate hydraulic-sized storm water treatment onsite. In response, City staff notes that allowing density intensification projects to qualify for a Waiver from hydraulic sized onsite treatment is consistent with the language in the storm water NPDES Permit that

allows a project to qualify for Alternative Compliance/Waiver measures based on "water quality benefit."

It is widely recognized that encouraging compact higher-density development in already developed urban areas is generally more protective of water quality throughout the watershed as a whole as compared to most other regulatory mechanisms that address water quality on a parcel-by-parcel basis. A publication entitled "*Protecting Water Resources with Smart Growth Development*," prepared by the United States Environmental Protection Agency supports this analysis. For example, Policy No. 40 in the above-referenced publication recognizes that the vast majority of existing regulations intended to protect stormwater quality typically do not recognize the benefits that can result from denser developments. The USEPA publication recognizes that a "sliding scale" should be applied to recognize stormwater benefits that can result from more compact developments.

To address RWQCB staff's remaining concerns regarding the FAR provision in the proposed City Policy, City staff is now recommending that the FAR provision be limited to the North San Jose Development Policy Area, and other areas that are specifically designated by Council for density intensification. This would limit the potential exemption to specific geographic area(s), which was the RWQCB staff's main request.

RWQCB staff also suggested that the proposed Policy be revised to clarify that a finding that infiltration based sizing is impracticable is not sufficient for an exemption, and clarify that developers must also analyze whether other hydraulic sizing measures, such as underground vaults or lined subdrains, would be practicable. City staff agrees that this clarification would be appropriate.

The final proposed Policy highlighting the additional revisions that address the remaining RWQCB concerns is attached.

If approved by the City Council at the February 15, 2005, public hearing evening session, the Draft Policy would become effective on February 16, 2005. Staff has clarified for Mr. Crawford that the Policy does not address the Hydromodification Management Plan provisions of the Permit (HMP), which is still in staff level discussion among the City, other Co-permittees in the Santa Clara Valley Urban Runoff Pollution Prevention Program, and the RWQCB.

PUBLIC OUTREACH

As discussed above, staff sent a public hearing notice to key stakeholders on January 27, 2005. Additional outreach consisted of posting the hearing notice on the Planning Divisions' web page and emailing the web page address to Bay Area representatives of stakeholder groups.

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COORDINATION

Preparation of the proposed revisions to the Policy was coordinated with the Environmental Services Department, the Department of Public Works, the Redevelopment Agency, and the City Attorney's Office.

CEQA

This project was found to be Exempt under the provisions of the California Environmental Quality Act (CEQA) under file No PP 05-012.

STEPHEN M. HAASE, DIRECTOR
Planning, Building and Code Enforcement

Attachment 1, Administrative Draft Policy 6-29, February 15, 2005 version

Attachment 2, February 8, 2005 Letter from Bruce Wolfe, RWQCB

Attachment 3, January 29, 2005 e-mail from Myron Crawford, Berg & Berg